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MONTANA LEGISLATIVE HISTORY

Chapter 194 Session L 2001
Bill House ____ Senate 257

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill X

House Committee on Judiciary

Hearing date(s)* 3-8

Executive action (vote) date(s)* 3-8

Comm. Report 3-8

Floor 2nd reading & vote 3-15

Floor 3rd reading & vote 3-17

Senate Committee on Public Health

Hearing date(s)* 1-26 2-2 2-12

Executive action (vote) date(s)* 2-12

Comm. Report 2-13

Floor 2nd reading & vote 2-15

Floor 3rd reading & vote 2-16

Conference or Free Conference Comm. ____ Yes X No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No

Committee _____ Report _____

NOTES:

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Compiled by: rg

Date: 3-9-2016

2

	Returned to Senate		
4/02	Sent to Enrolling		
4/03	Returned from Enrolling		
4/06	Signed by President		
4/09	Signed by Speaker		
4/11	Transmitted to Governor		
4/21	Signed by Governor		
4/21	Chapter Number Assigned		
	Chapter Number 320		
	Effective Date: 4/21/2001 - Sections 1(2), 2(2), and 3-7		
	Effective Date: 7/01/2001 - Sections 1(1), 2(1), and 2(3)		

SB 257 Introduced by Bohlinger, et al. *LC0448 Drafter: Niss*

Providing for Protection of Abandoned Children

1/16	Introduced		
1/16	First Reading		
1/16	Referred to Public Health, Welfare and Safety		
1/26	Hearing		
2/13	Committee Executive Action--Bill Passed as Amended	9	0
2/13	Committee Report--Bill Passed as Amended		
2/15	2nd Reading Passed on Voice Vote	49	0
2/16	3rd Reading Passed	47	0
	Transmitted to House		
3/01	Referred to Judiciary		
3/08	Hearing		
3/08	Committee Executive Action--Bill Concurred	16	0
3/08	Committee Report--Bill Concurred		
3/15	2nd Reading Concurred	100	0
3/17	3rd Reading Concurred	100	0
	Returned to Senate		
3/19	Sent to Enrolling		
3/20	Returned from Enrolling		
3/21	Signed by President		
3/26	Signed by Speaker		
3/27	Transmitted to Governor		
4/03	Signed by Governor		
4/03	Chapter Number Assigned		
	Chapter Number 194		
	Effective Date: 10/01/2001 - All Sections		

SB 258 Introduced by Bohlinger *LC0729 Drafter: Petesch*

Revise Education Savings Account Laws

11/30	Fiscal Note Needed		
1/16	Introduced		
1/16	Fiscal Note Requested		
1/16	First Reading		
1/16	Referred to Taxation		
1/22	Fiscal Note Received		
1/22	Fiscal Note Signed		
1/23	Fiscal Note Printed		
1/30	Hearing		
2/07	Committee Executive Action--Bill Passed as Amended	9	0
2/07	Committee Report--Bill Passed as Amended		
2/13	2nd Reading Passed on Voice Vote	50	0
2/14	3rd Reading Passed	50	0

Senate BILL NO. 257

INTRODUCED BY _____ (Primary Sponsor) _____

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; AMENDING SECTIONS 41-3-102, 41-3-401, AND 41-3-404, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; ~~or~~

(ii) substantial risk of harm to a child's health or welfare; or

(iii) actual abandonment or substantial risk of abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(10) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area

while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant"

means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused ~~or~~, neglected, or abandoned."

Section 2. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused~~,~~ or neglected~~, or abandoned~~ and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) (a) Any person interested in any cause under this chapter has the right to appear. Any foster

parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-404(3), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-404 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in

61

subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing -- temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing on the petition pursuant to 41-3-401(7)(a) or (7)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the

examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

NEW SECTION. **Section 4. Applicability.** [This act] applies to proceedings on petitions filed pursuant to 41-3-401 after October 1, 2001.

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on January 26, 2001 at 3:10 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 257, 1/18/2001; SB 171, 1/16/2001
Executive Action: SB 82; SB 77

HEARING ON SB 257

Sponsor: SEN. JOHN BOHLINGER, SD 7, BILLINGS

Proponents: Diann Mueller, Billings
Mick Wolff, Billings

Opponents: None

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, BILLINGS introduced SB 257. This bill would provide for protection of abandoned children. This bill specifically included abandonment as a basis for abuse or neglect proceedings and a determination that a child is a youth in need of care. Under this proposal a grandparent or relative, who is caring for this child, would be allowed by the court to intervene if it is determined to be the best interest of the child. The purpose of this bill is to give be for grandparents of abandoned grandchildren the right to provide protection before child abuse or neglect occurs. The heart of this bill would allow grandparents to intervene.

Proponents' Testimony:

Diann Mueller, Billings, and her husband have had guardianship of their nine year old granddaughter. **Ms. Mueller** had been a facilitator of a support group for grandparents raising grandchildren, sponsored by AARP, St, Vincent's Senior Services, and the Billings Community Center. During that time she heard numerous horror stories of how grandparents have struggled. SB 257 would give grandparents and other relatives the legal right to protect children before abuse and neglect have taken place. Ms. Mueller's testimony is attached EXHIBIT **(phs21a01)**.

Ms. Mueller read a letter from **Gladys Stahl**. **Ms. Stahl** was unable to attend the hearing, but urged the committee to promote this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HARGROVE asked if other relatives are included. **SEN. BOHLINGER** said he had some amendments to further clarify the bill EXHIBIT **(phs21a02)** SBO25701.asf.

SEN. CHRISTIAENS said the definition of grandparents was unclear. He wondered if these were only biological grandparents, or would blended grandparents be included. He doesn't feel the definition goes far enough. **SEN. BOHLINGER** said he was not sure what the definition of grandparents was, and he would check to see if the definition should be expanded.

{Tape : 1; Side : A;}

SEN. HARGROVE asked if the placement of children is left up to the judges. **SEN. BOHLINGER** said his intent was to give grandparents a preferential position in the court.

SEN. O'NEIL asked if this bill would give preference to the grandparents over the noncustodial parent. **SEN. BOHLINGER** said the United States Supreme Court has ruled that parents have first standing in their relationship with their children. He said he was mostly concerned about parents who have abandoned their children.

SEN. DEPRATU agreed the definition of grandparents should be tightened.

SEN. STONINGTON asked why "abandoned" had been struck from section two. **Mr. Hunter** replied that abandonment had now been added to the definition as a type of abuse. He passed out the amendments from his department EXHIBIT **(phs21a03)**.

Sen. Stonington asked if the bill had any additional substance other than the issue of abandonment. **Mr. Hunter** said the bill would give specific rights to grandparents and other relatives.

SEN. JOHNSON had a question about the amendment for page 6, line 5. **Mr. Hunter** said the intent of this was for the relatives who are presently caring for the child, not some long lost relative.

SEN. HARGROVE was concerned about the effect this bill would have on grandparents living in another state. **Mr. Hunter** did not believe it would have any effect on them.

SEN. BISHOP asked what is "substantial risk of abandonment" and why was that struck from the bill. **Mr. Hunter** said abandonment is pretty clear, but they were not sure what "substantial risk of abandonment" actually meant.

SEN. O'NEIL asked the sponsor if he would you have an objection to having this bill amended to show noncustodial parents already have priority. **SEN. BOHLINGER** said he would leave that up to the wisdom of the committee.

SEN. CHRISTIAENS said they found the section of the law that cleared up the relationship with grandparents. **SEN. BOHLINGER** said the present law, section 40-4-28228, regarding the relationship of the nonparent and the child, it is in the best interest of the child to continue their relationship. **SEN.**

CHRISTIAENS said he would work with **Ms. Fox** and prepare an amendment to clarify the intent of this bill.

Closing by Sponsor:

SEN. BOHLINGER said they were trying to preserve a special relationship for grandparents. He would also like the description be expanded to kinship care givers, which would include brothers, sisters, aunts and uncles. He thanked the proponents for their testimony.

SEN. BISHOP asked that all amendments be prepared for this bill, by Wednesday, January 31, 2001. He would like the committee to take executive action.

EXECUTIVE ACTION ON SB 82

Ms. Fox explained amendments to SB 82 EXHIBIT**(phs21a04) SB008201.asf.** She said the bulk of the amendments remove the reference to the state auditor's office.

Motion/Vote: SEN. STONINGTON moved that **SB 82 BE ADOPTED AS AMENDED. Motion carried 10-0.**

Motion/Vote: SEN. STONINGTON moved that **SB 82 DO PASS AS AMENDED. Motion carried 10-0.**

EXECUTIVE ACTION ON SB 77

Ms. Fox explained the amendments to SB 77 EXHIBIT**(phs21a05)SB007701.asf.** These amendments came from the DPHHS.

Ms. Fox then passed out a TANF Block Grant tracking sheet EXHIBIT**(phs21a06).** Sen. Christiaens had requested this from Mr. Hudson.

Motion/Vote: SEN. HARGROVE moved that **SB 77 BE ADOPTED AS AMENDED. Motion carried 11-0.**

Motion/Vote: SEN. HARGROVE moved that **SB 77 DO PASS AS AMENDED. Motion carried 10-0.**

Bill #257

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 1-26-01
BILL NO. SB 257

Give Grandparents and Kinship Caregivers the Right to Protect Their Abandoned Grandchildren or Minor Relatives

Mr. Chairman, members of the Committee, my name is Diann Mueller and I am from Billings. My husband and I have legal guardianship of our 9-year granddaughter. It was by the grace of God not our wisdom that guardianship was attained. The child was in a neglectful situation. We were able to convince the parents that if we had guardianship, they could still have a relationship her. They agreed and through a court hearing we were granted permanent guardianship. One parent visits weekly while the other has not seen her for years. It was not our goal to raise another child when we had just felt the freedom of an empty nest. The dreams of baking cookies, spoiling her and sending her to home to loving parents with safety and security vanished years ago. Our current goal is to successfully complete 4th grade and help other grandparents who have not been as fortunate in protecting their grandchildren as we have.

Do you know someone with an adult child who has produced children but their life style is not suitable for children? They have addictions or other concerns that are a higher priority than the children. Grandparents have stepped in to provide care for children in need without any legal support. The grandparents love their children, as well as, the grandchildren. They continue to hope and pray things will get better. They do not set out to raise another family. It just happens! Children have been left with grandparents or other relatives for weeks, months and even years. They provide love, food a safe home and some stability in the lives of these little ones.

As the situation continues the grandparents find themselves full time parents again. Some find this a financial burden. They are afraid to apply for the small state grandparent grant of $103.00 a month. The fear is that they have no legal right to the child. The parents can come in and take the children even if they have no suitable home for children. The state Child Support Enforcement Division will go after the parent if the grandparent applies for this small grant. Grandparents are held hostage by the fear that something bad will happen to their grandchildren if they make waves.

For five years my husband and I facilitated a support group for grandparents raising grandchildren sponsored by AARP, St. Vincent Senior Services and The Billings Community Center. During this time I received calls from all over the state from grandparents wanting help. These are the grandparents and children who motivated me to get involved in the legal issue. I can not possibly relate all of the horror stories we heard during this time. But I'd like to share a couple of tragedies.

Amendments to Senate Bill No. 257
1st Reading Copy

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 1-26-01
BILL NO. SB257

Requested by Senator John Bohlinger

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
February 2, 2001 (2:36PM)

1. Title, line 10.
Following: "PETITION;"
Insert: "PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD;"

2. Title, line 11.
Strike: the first "AND"
Following: "41-3-404,"
Insert: "41-3-406, AND 41-3-421,"

3. Page 2, line 18.
Strike: "actual"
Strike: "or substantial risk of abandonment"

4. Page 6, line 5.
Following: "caring for or"
Insert: "a relative of the child who"

5. Page 7, line 15.
Strike: "on the petition"

6. Page 8, line 9.
Following: line 8
Insert: **"Section 4.** Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing -- temporary legal custody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the

17

Amendment Requested by the Department of Public Health and Human Services

For the Senate Public Health, Welfare and Safety Committee

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 1-26-01
BILL NO. SB 257

1. Page 2, line 18.
Following: (iii)
Strike: "actual"
Following: "abandonment"
Strike: "or substantial risk of abandonment"

2. Page 6, line 5.
Following: "caring for or"
Insert: "a relative of the child who"

3. Page 7, line 15.
Following: "appearing"
Strike: "on the petition"

DATE 1-26-01

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 171 - Glaser

SB 257 - Bohlinger

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Deann Mueller	406-248-3307		257		
Mick Wolff	248-3307		257		
M A Wellbeck	444-3338		SB 171		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 2, 2001 at 3 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:
Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)

Members Excused: Sen. Fred Thomas (R)
Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB180, 1/23/01, HB 50, 1/23/01
Executive Action: HB 180, HB 50, SB 257, SB 290 SJ8

HEARING ON HB 180

Sponsor: REP. TIM CALLAHAN, HD 43, Great Falls

Proponents: Sandy Oitzinger, Montana Juvenile Probation Officers Association
Sami Butler, Montana Nurses Association

EXECUTIVE ACTION ON SB 257

Motion: **SEN. JOHNSON** moved that **SB 257 BE AMENDED.**

Ms. Fox explained the amendments from DPHHS. She said there was one issue she needed to explain, on page two of the amendments it says the word may. She explained **SEN. BOHLINGER** preferred the word shall and DPHHS preferred the word may.

SEN. BISHOP said we should check with **SEN. BOHLINGER** to see what he would prefer.

SEN. JOHNSON withdrew his motion.

EXECUTIVE ACTION ON SB 290

Motion/Vote: **SEN. FRANKLIN** moved that **SB 290 DO PASS. Motion carried 9-0. SENATORS GRIMES and THOMAS** voted by proxy.

EXECUTIVE ACTION ON SJ 8

Motion/Vote: **SEN. HARGROVE** moved that **SJ 8 BE ADOPTED. Motion carried 9-0. SENATORS JOHNSON and THOMAS** voted by proxy.

MONTANA SENATE
2001 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 2-2-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHRIS CHRISTIAENS			
SEN. BOB DEPRATU	X		
SEN. EVE FRANKLIN	X		
SEN. DON HARGROVE	X		
SEN. DAN HARRINGTON	X		
SEN. ROYAL JOHNSON	X		
SEN. JERRY O'NEIL	X		
SEN. EMILY STONINGTON			X
SEN. FRED THOMAS			X
SEN. DUANE GRIMES, VICE CHAIRMAN	X		
SEN. AL BISHOP, CHAIRMAN	X		

SEN:1997
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CS-09

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP,** on February 12, 2001 at 3:15 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 341, 2/1/2001; SB 361, 2/1/2001
Executive Action: SB 257; SB 288; SB178; SB 221

HEARING ON SB 341

Sponsor: SEN. DALE BERRY, SD 30, HAMILTON

Proponents: Jerri Domme, Montana Tobacco Use Prevention Program

EXECUTIVE ACTION ON SB 257

Motion/Vote: SEN. CHRISTIAENS moved that **SB 256 BE AMENDED** EXHIBIT **(phs35a04)** SB025701.asf. **Motion carried 8-1 with Hargrove voting no.**

Discussion:

SEN. DON HARGROVE said this amendment really takes things out of the judge's hands.

SEN. ROYAL JOHNSON asked if it is not already in the federal law that the judge has that discretion. **Ms. Fox** said what they learned with SB 116, is the department has the authority. If there is a dispute, then the courts have the authority.

Motion/Vote: **SEN. CHRISTIAENS** moved that **SB257 DO PASS AS AMENDED. Motion carried 10-0.**

HEARING ON SB 361

Sponsor: SEN. WALTER MCNUTT, SD 50, SIDNEY

Proponents: **Bob Olsen, Montana Hospital Association**
Jerry Loendorf, Montana Medical Association
Gloria Hermanson, Montana Ambulatory Surgery Centers
Gary Lucine, Montana Chapter of Physical Therapists
Amy Sullivan, Montana Occupational Therapy Association
Sami Butler, Montana Nurses Association

Opponents: **Al Smith, Montana Trial Lawyers Association**
Randy Bishop, Montana Trial Lawyers Association

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD 50, SIDNEY introduced SB 361. He said it was requested by the Hospital Association. This bill is an act providing that a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, hospital, psychologist, licensed social worker, or licensed professional counselor, claiming a lien for services or products provided to a person injured by another is not liable

MONTANA SENATE
2001 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 2-12-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHRIS CHRISTIAENS	X		
SEN. BOB DEPRATU	X		
SEN. EVE FRANKLIN	X		
SEN. DON HARGROVE	X		
SEN. DAN HARRINGTON	X		
SEN. ROYAL JOHNSON	X		
SEN. JERRY O'NEIL	X		
SEN. EMILY STONINGTON	X		
SEN. FRED THOMAS			X
SEN. DUANE GRIMES, VICE CHAIRMAN	X		
SEN. AL BISHOP, CHAIRMAN	X		

SEN:1997
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4
2-12-01
SB257

Amendments to Senate Bill No. 257
1st Reading Copy

Requested by Senator John Bohlinger

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
February 2, 2001 (2:36PM)

1. Title, line 10.
Following: "PETITION;"
Insert: "PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD;"

2. Title, line 11.
Strike: the first "AND"
Following: "41-3-404,"
Insert: "41-3-406, AND 41-3-421,"

3. Page 2, line 18.
Strike: "actual"
Strike: "or substantial risk of abandonment"

4. Page 6, line 5.
Following: "caring for or"
Insert: "a relative of the child who"

5. Page 7, line 15.
Strike: "on the petition"

6. Page 8, line 9.
Following: line 8
Insert: **"Section 4.** Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing -- temporary legal custody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the

26

following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (3)(a), the court may award custody to the extended family member who can best meet the child's needs.

~~(3)~~(4) If reasonable efforts have been made to prevent

removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or ~~(3)~~ (4), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

~~(6)~~(7) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(5)~~ (6).

~~(7)~~(8) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(8)~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

{Internal References to 41-3-406:

40-4-204 x	*41-1-306x*	*41-3-102 x*	*41-3-401 x*
41-3-421 x	*41-3-421 x*	*41-3-1008 x*	*41-3-1014 x*
41-3-1014 x	*50-20-203 x}"*		

Insert: "Section 5. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to

20

41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection ~~(8)~~ (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection ~~(8)~~ (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years ~~old~~ of age or the child is in a group of siblings, at least one of whom is at least 12 years ~~old~~ of age, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-406(3).

~~(3)~~(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection ~~(8)~~ (9).

~~(4)~~(5) A guardian appointed under this section may exercise

2-9

the powers and has the duties provided in 72-5-231.

~~(5)~~(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

~~(6)~~(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

~~(7)~~(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

~~(8)~~(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

~~(9)~~(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

{*Internal References to 41-3-421:*
41-3-401x *41-3-406x* *41-3-412x* *41-3-607 x*
41-3-1103 x}"

Insert: "NEW SECTION. **Section 6. Department to give placement priority to extended family member of an abandoned child.** (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-406 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-406(3).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only

one parent."

Insert: "NEW SECTION. **Section 7. {standard} Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 6]."

Renumber: subsequent section

- END -

STANDING COMMITTEE REPORT REQUEST

Committee Public Health Date 2-12-01

The following committee action occurred on the above date:

Bill/Resolution Number	Do Pass	Do Not Pass	Con-cur	Do Not Concur	Committee Vote Total Yes	No	Amend	Amendment File Name	Senator Carrying House Bill
1. SB251	☒	☐	☐	☐	9	0	☒	SB25101.1f	
2. SB288	☒	☐	☐	☐	9	0	☒	SB28801.1f	
3. S	☐	☐	☐	☐			☐		
4.	☐	☐	☐	☐			☐		
5.	☐	☐	☐	☐			☐		
6.	☐	☐	☐	☐			☐		

Committee Secretary Jeanne Forsetter Phone 4440 Room # 411

Legislative Staffer Susan Foy Phone 3597

Amendment Coordinator _____ Date _____ Time _____

standrpt 2-2-99

STANDING COMMITTEE REPORT REQUEST

Committee Public Health Date 2-12-01

The following committee action occurred on the above date:

Bill/Resolution Number	Do Pass	Do Not Pass	Con-cur	Do Not Concur	Committee Vote Total Yes	No	Amend	Amendment File Name	Senator Carrying House Bill
1. SB257	☒	☐	☐	☐	~~8~~ ~~10~~ 10	0	☒	SB025701.asf	
2. SB288	☒	☐	☐	☐	9 ~~8~~ ~~7~~	0	☒	SB028801.asf	
3. SB178	☐	☐	☐	☐	tabled	"	☐		
4. SB221	☐	☐	☐	☐	6	3 Christ Stor Frank	☒	SB022105.asf	
5. SB221	☐	☐	☐	☐	5	4 Chris Stori Hasy	☒	SB022104.asf	
6. SB221	☐	☐	☐	☐			☒	SB022105.asf SB022104.asf	

Committee Secretary _____ **Phone** _____ **Room #** _____

Legislative Staffer _____ **Phone** _____

Amendment Coordinator _____ **Date** _____ **Time** _____

standrpt 2-2-99

STANDING COMMITTEE REPORT REQUEST

Committee Public Health **Date** 2-12-01

The following committee action occurred on the above date:

Bill/Resolution Number	Do Pass	Do Not Pass	Con-cur	Do Not Concur	Committee Vote Total Yes	No	Amend	Amendment File Name	Senator Carrying House Bill
1. SB251	☒	☐	☐	☐			☒	SB25101.05f	
2. SB288	☒	☐	☐	☐			☒	SB28801.05f	
3. S	☐	☐	☐	☐			☐		
4.	☐	☐	☐	☐			☐		
5.	☐	☐	☐	☐			☐		
6.	☐	☐	☐	☐			☐		

Committee Secretary Jeanne Forseter **Phone** 4440 **Room #** 411

Legislative Staffer Susan Fay **Phone** 3597

Amendment Coordinator _____ **Date** _____ **Time** _____

standrpt 2-2-99

Vote

257 Sen Franklin yes 7 SB 257.
Sen Grimes Bohlinger

Room for Friday -

288 Grimes
~~Franklin~~
~~Brown~~ yes

178 Table SB 178
Chris
Grimes

221 Mot 05 Amend
Grimes
~~Chris~~

221 Motion 04 Amend
ayes nays

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Public Health, Welfare and Safety** report that **Senate Bill 257** (first reading copy – white) **do pass as amended**.

Signed: Al Bishop
Senator Al Bishop, Chair

And, that such amendments read:

1. Title, line 10.
Following: "PETITION;"
Insert: "PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD;"

2. Title, line 11.
Strike: the first "AND"
Following: "41-3-404,"
Insert: "41-3-406, AND 41-3-421,"

3. Page 2, line 18.
Strike: "actual"
Strike: "or substantial risk of abandonment"

4. Page 6, line 5.
Following: "caring for or"
Insert: "a relative of the child who"

5. Page 7, line 15.
Strike: "on the petition"

6. Page 8, line 9.
Following: line 8
Insert: **"Section 4.** Section 41-3-406, MCA, is amended to read:
"41-3-406. Dispositional hearing -- temporary legal

Committee Vote:
Yes 9, No 0.

custody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (3)(a), the court may award custody to the extended family member who can best meet the child's needs.

~~(3)~~ (4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~ (5) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or ~~(3)~~ (4), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~ (6) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

~~(6)~~ (7) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(5)~~ (6).

~~(7)~~ (8) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(8)~~ (9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.""

Insert: "Section 5. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be

subsidized by the department under subsection ~~(8)~~ (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection ~~(8)~~ (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years ~~old~~ of age or the child is in a group of siblings, at least one of whom is at least 12 years ~~old~~ of age, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-406(3).

~~(3)~~(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection ~~(8)~~ (9).

~~(4)~~(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

~~(5)~~(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the

guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

~~(6)~~ (7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

~~(7)~~ (8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

~~(8)~~ (9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

~~(9)~~ (10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5.""

Insert: "NEW SECTION. **Section 6. Department to give placement priority to extended family member of an abandoned child.** (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-406 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-406(3).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent."

Insert: "NEW SECTION. **Section 7. Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 6]."

Renumber: subsequent section

- END -

SB 476, introduced by Keenan, Bishop, Christiaens, E. Clark, Glaser, Grimes, Lawson, Nelson, Schrumpf, B. Thomas, referred to Judiciary.
SB 477, introduced by Jergeson, Bishop, Christiaens, E. Clark, Glaser, Grimes, Lawson, Nelson, Schrumpf, B. Thomas, Waterman, referred to Judiciary.
SB 478, introduced by Franklin, referred to Agriculture, Livestock and Irrigation.
SB 479, introduced by Hargrove, referred to Local Government.
SB 480, introduced by Berry, referred to Local Government.
SB 481, introduced by Berry, referred to Local Government.
SB 482, introduced by Ekegren, Whitaker, referred to Local Government.
SB 483, introduced by Christiaens, Beck, Harrington, Zook,, referred to Finance.
SB 484, introduced by Beck, referred to Natural Resources
SB 485, introduced by Ellingson, referred to Judiciary..

MOTIONS

Majority Leader Thomas moved that the Senate stand in recess until the hour of 1:00 p.m. this legislative day for purpose of party caucuses. Motion carried.

Senate recessed at 12:43.

Senate resumed at 1:12 p.m. Roll Call. All members present except Senator O'Neil, excused. Quorum present.

SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Halligan in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 330 - Senator Mahlum moved SB 330 do pass. Motion carried unanimously.

SB 334 - Senator Grosfield moved SB 334 do pass. Motion carried unanimously.

SB 386 - Senator Waterman moved SB 386 do pass. Motion carried unanimously.

SB 392 - Senator Cobb moved SB 392 do pass. Motion carried unanimously.

SB 419 - Senator Grimes moved SB 419 do pass. Motion carried unanimously.

SB 94 - Senator Shea moved SB 94 do pass. Motion carried with Senators R. Johnson, K. Miller, Taylor, and J. Wells voting nay.

SB 116 - Senator Stonington moved SB 116 do pass. Motion carried unanimously.

SB 257 - Senator Bohlinger moved SB 257 do pass. Motion carried unanimously.

3rd Reading

Absent or not voting: None.
Total 0

Excused: Mahlum, O'Neil, Taylor.
Total 3

SB 257 passed as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, McCarthy, McNutt, Miller, Mohl, Nelson, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Mahlum, O'Neil, Taylor.
Total 3

SB 259 passed as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, McCarthy, McNutt, Miller, Mohl, Nelson, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Mahlum, O'Neil, Taylor.
Total 3

SB 282 passed as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, McCarthy, McNutt, Miller, Mohl, Nelson, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 47

412

SENATE BILL NO. 257

INTRODUCED BY J. BOHLINGER, SCHRUMPF

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD; AMENDING SECTIONS 41-3-102, 41-3-401, ~~AND~~ 41-3-404, 41-3-406, AND 41-3-421, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COMM ON
PUBLIC HEALTH, WELFARE & SAFETY

SENATE BILL NO. 257

INTRODUCED BY J. BOHLINGER, SCHRUMPF

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD; AMENDING SECTIONS 41-3-102, 41-3-401, ~~AND~~ 41-3-404, 41-3-406, AND 41-3-421, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; ~~or~~

(ii) substantial risk of harm to a child's health or welfare; or

(iii) ~~actual~~ abandonment ~~or substantial risk of abandonment~~.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(10) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described

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in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused ~~or,~~ neglected, or abandoned."

Section 2. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused~~,~~ or neglected~~, or abandoned~~ and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or

guardian, and if there is no guardian, the court shall appoint one.

(7) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or A RELATIVE OF THE CHILD WHO has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-404(3), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-404 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that

may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing ~~on the petition~~ pursuant to 41-3-401(7)(a) or (7)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

450

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

SECTION 4. SECTION 41-3-406, MCA, IS AMENDED TO READ:

"41-3-406. Dispositional hearing -- temporary legal custody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not

require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (3)(a), the court may award custody to the extended family member who can best meet the child's needs.

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or

52

~~(3)~~ (4), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

~~(6)~~(7) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(5)~~ (6).

~~(7)~~(8) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(8)~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

SECTION 5. SECTION 41-3-421, MCA, IS AMENDED TO READ:

"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection ~~(8)~~ (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are

found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection ~~(8)~~ (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years ~~old~~ of age or the child is in a group of siblings, at least one of whom is at least 12 years ~~old~~ of age, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-406(3).

~~(3)~~(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection ~~(8)~~ (9).

~~(4)~~(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

~~(5)~~(6) The court may revoke a guardianship ordered pursuant to this section if the court finds,

54

after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

~~(6)~~(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

~~(7)~~(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

~~(8)~~(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

~~(9)~~(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

NEW SECTION. **Section 6. Department to give placement priority to extended family member of an abandoned child.** (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-406 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-406(3).

(3) THIS PART DOES NOT AFFECT THE DEPARTMENT'S ABILITY TO ASSESS THE APPROPRIATENESS OF PLACEMENT OF THE CHILD WITH A NONCUSTODIAL PARENT WHEN ABANDONMENT HAS BEEN FOUND AGAINST ONLY ONE PARENT.

NEW SECTION. **SECTION 7. CODIFICATION INSTRUCTION.** [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 41, CHAPTER 3, PART 4, AND THE PROVISIONS OF TITLE 41, CHAPTER 3, PART 4, APPLY TO [SECTION 6].

NEW SECTION. **Section 8. Applicability.** [This act] applies to proceedings on petitions filed pursuant to 41-3-401 after October 1, 2001.

- END -

56

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 8, 2001 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Bill Eggers (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: **SB 128 - 3-02-01**
SB 257 - 3-02-01
SB 282 - 3-02-01

Morales, Mr. O'Connell, Mr. Lemoine, Mr. Paxinos, Senator Bohlinger for further information and clarification.

{Tape : 2; Side : B; Approx. Time Counter : 0.9 - 29.6}

Closing by Sponsor: Senator Bohlinger closed the Hearing on SB 128 by saying this is a serious problem, not only a Billings problem, but a state-wide problem. The officers he spoke with said if we can make this a felony crime they will then have the opportunity to raise the bonding limits and with a higher bond, these people will not just be bonded out of jail and then released. They will have to stay in jail and sent away to the state prison for 20 years. The Bill is important because it is going to help save some lives.

HEARING ON SB 257

Sponsor: Senator John Bohlinger, SD7, Billings said this Bill will provide protection of abandoned children, specifically abandonment as a basis for abuse or neglect proceedings and a determination that a child is a youth in need of care. This Bill would provide a family member care-giver to the child and shall be given priority in participating in abuse and neglect proceedings.

Under this proposal a grandparent or relative of a child who is caring for that child, who is under the age of 18, has been abandoned, or is at risk of being abandoned by their natural parents, can be described as a youth in need of care. In such a case a grandparent or relative may be allowed by the courts to intervene if it is determined it is in the child's best interest.

The purpose of this Bill is to give grandparents or extended family members of the abandoned child greater standing in the court proceedings.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 10.7}

Proponents: Gladys Stahl, President, Southside Senior Center, Billings.

Chuck Notbohm, AARP, Clancy

Rep. Paul Clark, HD 72, Trout Creek at the request of Bud Clinch, President, Legacy Legislature Planning Committee.

Opponents: None

Questions from Committee Members and Responses: Reps. Hurdle, Peterson, Gutsche to **Senator Bohlinger, Mr. Notbohm, and Chuck Hunter, Department of Public Health and Human Services for further clarification.**

{Tape : 3; Side : A; Approx. Time Counter : 10.7 - 24.8}

Closing by Sponsor: Senator Bohlinger closed the Hearing on SB 257 by saying this Bill is about placing children in safe homes where care, love and concern can be provided. It will allow grandchildren or children of family members to be placed in an environment where they can receive love and attention that all children need. It's a way to rescue children from unhealthy situations.

{Tape : 3; Side : A; Approx. Time Counter : 24.8 - 26.6}

HEARING ON SB 334

Sponsor: Senator Lorents Grosfield, SD 13, Big Timber said this is a Bill to require the Department of Justice to establish a better rehabilitation improvement program that works. Some private entities have started some rehab schools of their own and are being used around the state in a variety of communities with some success. This is not driver training in the sense of high school programs etc. These drivers have a lot of tickets or conviction points and a judge will require them to attend a rehab improvement program. **(juh53a04)**

{Tape : 3; Side : A; Approx. Time Counter : 26.6 - 30}
{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 2.4}

Proponents: Tony Steffins, Detective, Park County Sheriff's office, Livingston and operates Rocky Mountain Traffic School. (juh53a05)

Terry Steffins, co-owner Rocky Mountain Traffic School.

Brenda Nordlund, Department of Justice, Helena

Opponents: None

Questions from Committee Members and Responses: Reps. Adams, Noennig, Gutsche, Harris, to Mr. Steffins, Senator Grosfield, Ms. Nordlund for further explanation.

Closing by Sponsor: Senator Grosfield closed the Hearing on SB334

{Tape : 3; Side : B; Approx. Time Counter : 2.4 - 28.0}

EXECUTIVE ACTION ON SB 257

Motion/Vote: REP. YOUNKIN moved that SB 257 BE CONCURRED IN. #1 Motion carried unanimously 16 - 0.

EXECUTIVE ACTION ON SB 334

Motion: REP. YOUNKIN moved that SB 334 BE CONCURRED IN. #2

Discussion: Reps. Rice, Adams, Laszloffy, Peterson, Thomas, Holden, Gutsche, Clark, Noennig.

{Tape : 3; Side : B; Approx. Time Counter : 28 - 29.9}
{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 9}

Motion/Vote: REP. CLARK moved that SB 334 BE AMENDED. Motion failed 1-15 with Rep. Clark voting aye. Rep. Clark withdrew his amendment.

Discussion: Reps. Younkin, Rice, Shockley.

Vote: Motion #2, SB 334 Be Concurred In carried 15-3 with Reps. Adams, Clancy and Rice voting no.

{Tape : 4; Side : A; Approx. Time Counter : 9 - 13.5}

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-08-01 Bill NO. SB257 NUMBER 1

MOTION: Rep. Younkin moved Be Recommended Do Pass Carried Unanimously 16-0

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle	✓	
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

16 0

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-08-01

BILL NO. SB257 SPONSOR(S) Sen. Bahlenger

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Chuck Rothbum	Choteau	AARP
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 257** (third reading copy - blue) **be concurred in**.

Signed: _____
Representative Jim Shockley, Chair

To be carried by Representative Clarice Schrumpf

- END -

Committee Vote:
Yes 16, No 0.

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Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin.
Total 97

Noes: Mr. Speaker.
Total 1

Excused: None.
Total 0

Absent or not voting: Cyr, Mood.
Total 2

SB 199 - Representative Esp moved **SB 199** be concurred in. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Esp, Facey, Fisher, Forrester, Fuchs, Gallik, Gallus, Gillan, Haines, Harris, Hedges, Himmelberger, Holden, Jackson, Jacobson, Jayne, Jent, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.
Total 90

Noes: Erickson, Fritz, Galvin-Halcro, Golie, Gutsche, Hurdle, Juneau, Lenhart, Musgrove, Tramelli.
Total 10

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 257 - Representative Schrumpf moved **SB 257** be concurred in. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.
Total 100

Noes: None.
Total 0

64

Absent or not voting: None.
Total 0

SB 228 concurred in as follows:

Ayes: Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branac, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.
Total 97

Noes: Adams, K. Peterson, Waitschies.
Total 3

Voted Absentee: Balyeat, Buzzas, Cyr, Dale, Forrester, Gallus, Holden, Keane, Rice, Ayes.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 257 concurred in as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branac, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.
Total 100

Noes: None.
Total 0

Voted Absentee: Balyeat, Buzzas, Cyr, Dale, Forrester, Gallus, Holden, Keane, Rice, Ayes.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

AN ACT PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD; AMENDING SECTIONS 41-3-102, 41-3-401, 41-3-404, 41-3-406, AND 41-3-421, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; ~~or~~

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(10) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused ~~or~~, neglected, or abandoned."

Section 2. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused~~,~~ or neglected~~, or abandoned~~ and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-404(3), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-404 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-401(7)(a) or (7)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

Section 4. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing -- temporary legal custody.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the

education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (3)(a), the court may award custody to the extended family member who can best meet the child's needs.

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or ~~(3)~~ (4), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

~~(6)~~(7) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(5)~~ (6).

~~(7)~~(8) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(8)~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 5. Section 41-3-421, MCA, is amended to read:

"**41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies.** (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection ~~(8)~~ (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection ~~(8)~~ (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years ~~old~~ of age or the child is in a group of siblings, at least one of whom is at least 12 years ~~old~~ of age, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned

child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-406(3).

~~(3)~~(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection ~~(8)~~ (9).

~~(4)~~(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

~~(5)~~(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

~~(6)~~(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

~~(7)~~(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

~~(8)~~(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

~~(9)~~(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 6. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-406 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a

member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-406(3).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 6].

Section 8. Applicability. [This act] applies to proceedings on petitions filed pursuant to 41-3-401 after October 1, 2001.

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